IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6187 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ABDULGANI AHMED BHUNGA

Versus

STATE OF GUJARAT

Appearance:

MR PJ VYAS for Petitioner

MS HANSA B PUNANI for Respondent No. 1

None prsent for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/02/2000

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. Only contention raised by the learned counsel for the petitioner is that the land in dispute was mortgaged

by the respondents NO. 2 to 4 to the petitioner and the petitioner has no objection to give the land back to respondents No. 2 to 4 but the mortgage amount of Rs.5000/- has to be paid by them. This aspect of the matter has not been considered by the authorities below.

3. Even if it is taken that the land in dispute is mortgaged but the fact remains that the mortgage is of the year 1970 and application has been filed by the respondent in the year 1985 and as such the authority below should have taken into consideration this mortgage and it would have been permissible with the permission of the competent authority. Moreover, looking to this long delay in filing of this application and that substantial justice has to be done to both the parties, the authority below should have taken care of to see that if the land is returned back to the respondents NO. 2 to 4, the mortgage amount was ordered to be paid by them to the petitioner.

4. Though the orders of the authorities below are maintained, the respondents No. 2 to 4 are to pay Rs.5000/- of mortgage amount to the petitioner before the possession of the same has been delivered by the petitioner to them. The special civil application and Rule stand disposed of accordingly.

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zgs/-